

EXHIBIT C

United States Department of the Air Force



Enhanced Use Leasing

Lease Agreement

**DEPARTMENT OF THE AIR FORCE
LEASE AGREEMENT
ON NELLIS AIR FORCE BASE, LAS VEGAS, NEVADA**

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LIST OF EXHIBITS

- Exhibit A - Description and Map of Leased Premises**
- Exhibit A-1 - Discharge Easement**
- Exhibit A-2 - Non-Exclusive List of Pre-Existing Outgrants**
- Exhibit B-1 - Physical Condition Report**
- Exhibit B-2 - Environmental Site Assessment**
- Exhibit B-3 - Finding of No Significant Impact (FONSI)**

**DEPARTMENT OF THE AIR FORCE
LEASE OF PROPERTY
ON NELLIS AIR FORCE BASE, LAS VEGAS, NEVADA**

THIS LEASE OF PROPERTY ("Lease") is made to be effective as of October 1, 2008, (the "Effective Date"), by and between THE UNITED STATES OF AMERICA, acting by and through THE SECRETARY OF THE AIR FORCE (the "Secretary" or the "Government") and the CITY OF NORTH LAS VEGAS, a municipal corporation created under the laws of the State of Nevada, with its principal offices located at 2200 Civic Center Drive, North Las Vegas, Nevada ("Lessee"). The Government and the Lessee may sometimes be referred to jointly as the "Parties," and each separately may be referred to as a "Party."

PREAMBLE

WHEREAS, the Parties have identified a need for a cooperative partnership to ensure the areas surrounding Nellis Air Force Base are developed in a compatible manner that appropriately addresses the health and safety of the local community; and,

WHEREAS, the operational mission performed on Nellis Air Force Base is critical to our national security, and the nature of those operations, including live ordnance flight testing and training missions, requires additional planning prudence; and,

WHEREAS, the City of North Las Vegas has a governmental interest in developing a water treatment facility to service the surrounding region and potentially facilitate future development and financial stability; and,

WHEREAS the City of North Las Vegas has the ability to effectively manage encroachment of Nellis Air Force Base through a variety of mechanisms, including but not limited to adopting zoning ordinances reflecting compatible land uses and height control of structures near flight paths; adopting fair disclosure ordinances to specify disclosure to the public of Air Installation Compatible Use Zone (AICUZ) issues; incorporating AICUZ study recommendations in city comprehensive plans; adopting the Apex/Safety Overlay Districts by ordinance; and, entering into an interlocal agreement with Clark County that promotes growth compatible with the Nellis Air Force Base mission.

NOW THEREFORE, both Parties agree that they are committed to work together with property owners, service providers and other interested parties in the local community to ensure incompatible land use and development does not jeopardize either the Nellis Air Force Base mission or the safety of the citizens of North Las Vegas.

Recitals

(i) The Secretary, under the authority contained in 10 U.S.C. § 2667, has determined:

(a) that the Leased Premises is not excess property as defined by the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 102(c)); The Secretarial determination that the Leased Premises is non-excess is based on the following in accordance with criteria specified in Air Force Instruction (AFI) 32-9002:

(I) The Leased Premises is essential to future mission flexibility, operational changes, equipment changes, and for potential expansion of the current operations, activities or new, as well as relocating, operational unit bed down.

(II) With encroachment problems impacting Air Force facilities nationwide and based on the extensive aerospace training, including live ordnance deployment, to worldwide combat air forces conducted on Nellis Air Force Base ("Nellis AFB"), the Government's continued ownership of the Leased Premises ensures only compatible uses and provides an essential buffer zone against uncontrolled incompatible uses that may otherwise be approved by local community or private interests if the Leased Premises was declared excess and transferred.

(III) Use of the Leased Premises for a controlled-access municipal facility provides a security barrier between the Nellis AFB perimeter security fence and any structure outside of the Leased Premises, something that would not be possible if the Leased Premises was declared excess and transferred.

(b) that, pursuant to the Leasing Agreement, the Lessee will provide consideration in an amount that is not less than the fair market value of the Leased Premises;

(c) that a lease of the Leased Premises is advantageous to the United States;

(d) that a lease of the Leased Premises for the term established in **Condition 1** will promote the national defense or be in the public interest; and

(e) that a lease of the Leased Premises subject to only those revocation provisions provided in this Lease, and not unilateral lease revocation at any time, will promote the national defense or be in the public interest.

Leased Premises

NOW, THEREFORE, the Government, by virtue of the authority conferred by law, for the consideration set out below, hereby leases to the Lessee the real property as more specifically described in **Exhibit A** to this Lease (the "Leased Premises"), which consists of one parcel of land consisting of approximately forty one acres situated within the boundaries of Nellis Air Force Base ("Nellis AFB"), for purposes of construction and operation of a wastewater treatment facility (the "Facility") and for all other related lawful municipal purposes, all as more fully provided elsewhere in this Lease. The term "Project" shall refer collectively to the Leased Premises and the Facility.

AND GRANTS TO LESSEE the right to gain access to the Project through a route or routes designated from time to time by the Government, and to use the streets, driveways, sidewalks, and walkways on Nellis AFB for the purposes of pedestrian and vehicular ingress and egress to and from the Project in order to fulfill its contractual obligations for completion, operation, and maintenance of the Project, as such obligations are set forth in the Project Documents. The Government reserves the right to change, modify, or eliminate, or temporarily to close, any portion or portions of streets, driveways, sidewalks, and walkways. Provided, however, the Government agrees that it will not change, modify, or eliminate, or temporarily to close such streets, driveways, sidewalks, and walkways in a manner that will unreasonably interfere with the Lessee's use or the value of the Project under this Lease.

TOGETHER WITH the right to access to an area outside of the Project for purposes of constructing and maintaining a discharge line from the Facility to the discharge channel pursuant to the terms of the discharge easement as more specifically described in **Exhibit A-1** (the "Discharge Easement").

RESERVING, HOWEVER, unto the Government general access to the Leased Premises for the purpose of exercising the rights, interests, privileges, and benefits contained in the Project Documents, to the extent that those rights interests, privileges, and benefits go across, include, or encompass all or part of the Leased Premises, including, specifically, the utility systems located within the Leased Premises, and to the extent they are needed by the Government for the operation, security, or safety of Nellis AFB, or its assigned personnel, or for any other reasonable purpose, provided, however, that such general access shall not unreasonably interfere with the Lessee's use or the value of the Leased Premises under this Lease.

THIS LEASE is granted subject to the following conditions:

CONDITION 1.

TERM AND DELIVERY OF POSSESSION

1.1. **THIS LEASE** shall be for a term beginning at 12:01 a.m., October 1, 2008, ("Term Beginning Date") and of a duration of fifty (50) years ending at 11:59 p.m., September 30, 2058 ("Term Expiration Date"), unless sooner terminated in accordance with the terms contained in

this Lease. The period from the Term Beginning Date through the Term Expiration Date shall be referred to as the "Lease Term."

1.2. Possession of the Leased Premises will be delivered on the Term Beginning Date.

CONDITION 2.

EASEMENTS AND RIGHTS OF WAY

2.1. This Lease is subject to all existing easements, rights in the nature of easements, rights of way, licenses, and other property rights and interests (collectively, "Pre-Existing Outgrants"), whether of public record or not, for any purpose with respect to the Leased Premises. The Government shall have the right to reserve unto itself, or to grant to third parties, additional Outgrants. However, any such additional Outgrants shall not unreasonably interfere with the Lessee's use under this Lease or the value of the Leased Premises. A non-exclusive list of the Pre-Existing Outgrants is attached as Exhibit A-2 hereto.

2.2 In addition, the Government may not unreasonably withhold or delay consent to requests for granting of easements and rights-of-way for utilities and other purposes reasonably necessary to the construction and maintenance of utilities on the Leased Premises by the Lessee for a term not to exceed the Lease Term ("Lessee Outgrants"); however, any such additional Lessee Outgrants shall not interfere with the operations of the Government on portions of Nellis AFB not within the Leased Premises.

2.3 Nothing herein precludes the Government's creation of additional easements, rights-of-way, licenses, or other property interests to meet its own or other public requirements ("Future Outgrants"). The holders of Pre-Existing Outgrants and Future Outgrants shall have reasonable rights of ingress and egress over the Leased Premises in order to carry out the purpose of such Outgrants. These rights may also be exercised by workers engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the Future Outgrants, and by any Federal, state, or local official engaged in the official inspection thereof. Such additional Future Outgrants (i) shall not unreasonably interfere with the Lessee's interest in the Leased Premises; and (ii) shall be on commercially reasonable terms.

CONDITION 3.

CONDITION OF LEASED PREMISES

3.1. The Lessee has inspected, knows and accepts the condition and state of repair of the Leased Premises. It is understood and agreed that the Leased Premises are leased in an "AS IS," "WHERE IS" condition without any representation or warranty by the Government concerning their condition and without obligation on the part of the Government to make any alterations, repairs or additions. Except as set forth in Condition 10, the Government shall not be liable to Lessee for any damages or losses, whether direct or consequential, incurred by Lessee as the result of the discovery of any latent or patent defect in the Leased Premises. The Lessee acknowledges that the Government has made no representation or warranty concerning the

condition and state of repair of the Leased Premises nor any agreement or promise to alter, improve, adapt, or repair them which has not been fully set forth in this Lease.

3.2. The Lessee represents, warrants, and acknowledges that it has entered into this Lease on the basis of its own full investigation of all facts relating to, and conditions underlying, the Leased Premises and the development and use of the Leased Premises, including without limitation, environmental conditions, and that it has solely relied upon its own investigation. Given the Lessee's deemed knowledge of the facts and conditions affecting the Leased Premises, the Lessee shall exercise an appropriate level of care when conducting any ground-disturbing activities to ensure that such activities do not result in the unmanaged release of any hazardous substances, materials, or waste of any kind, including, but not limited to, pesticides, asbestos, and lead-based paint. The Lessee shall also be responsible for exercising an appropriate level of care with respect to any underground pipes and related infrastructure that may exist within the Leased Premises. The Lessee waives any claim or cause of action the Lessee may have against the Government under any Federal, state, or local law, ordinance, rule, or regulation now existing or hereafter enacted or promulgated, relating to environmental matters or conditions, in, on, under, about, or migrating from or onto, the Leased Premises, or by virtue of any common law right related to environmental conditions or matters in, on, under, about, or migrating from or onto, the Leased Premises except for (i) pre-existing environmental conditions that are attributable to the Government and that are not exacerbated by the Lessee, and that the Government specifically accepts responsibility for under **Condition 10** of this Lease; and (ii) Hazardous Substance releases caused by the Government that migrate onto the Leased Premises and that are not exacerbated by the Lessee. The provisions of this **Condition 3.2** survive the expiration of this Lease.

3.3. A lessee's acknowledgement of conditions of the Leased Premises signed by an authorized representative of the Lessee, is attached to **Exhibit B-1, Physical Condition Report**, for the Leased Premises. An additional Physical Condition Report will be prepared by the Government, and signed by the Parties, within ten (10) days after the expiration or earlier termination of this Lease ("Final PCR"). The Final PCR will be used by the Government to determine whether the Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease, including without limitation, **Condition 9** and **Condition 11**.

3.4. An Environmental Site Assessment for the Leased Premises at Nellis Air Force Base ("ESA") dated 11-Apr-2008 has been delivered to the Lessee. The ESA sets forth those environmental conditions and matters on and affecting the Leased Premises as of its effective date, as determined from the records and analyses reflected therein. The ESA is not, and shall not constitute, a representation or warranty on the part of the Government regarding the environmental or physical condition of the Leased Premises and the Government shall have no liability in connection with the accuracy or completeness thereof. In this regard the Lessee acknowledges and agrees that the Lessee has relied, and shall rely, entirely on its own investigation of the Leased Premises in determining whether to enter into this Lease. A separate ESA of the Leased Premises will be prepared by the Government, after the expiration or earlier termination of this Lease ("Final ESA"). Such Final ESA will document the environmental conditions and matters on and affecting the Leased Premises on the ending date of this Lease as determined from the records and analyses reflected therein. The Final ESA will be used by the

Government in determining whether the Lessee has fulfilled its obligations under this Lease including without limitation **Condition 10**.

CONDITION 4.

RENT

4.1. **Base Rent.** The Government shall receive rent ("Base Rent") in the form of Twenty Five Million Dollars (\$25,000,000.00) in cash to be deposited into the In-Kind Consideration Account ("ICA").

4.2. **Additional Rent.** The following events shall constitute Additional Rent or cause the Base Rent to increase:

- (i) any interest earned on the funds in the ICA, which interest shall remain in the ICA,
- (ii) Lessee's design and installation of wastewater treatment lines from the existing Government wastewater lines to the Facility.
- (iii) Lessee's supplying the Nellis AFB golf course with reclaimed water that meets the requirements stated in NAC 445A.275(2)(c) and 445A.276 in the amount of up to 0.5 million gallons per day for each of January, February, November and December, 1.0 million gallons per day for March, 1.3 million gallons per day for April and May, 2.0 million gallons per day for June, September and October, and 2.2 million gallons per day for July and August (the "Discount Usage Quantity") at the following cost:
 - a. no cost to the Government for the twenty five (25) year period beginning October 1, 2008 through September 30, 2033;
 - b. 50% of the Lessee's then published prevailing rate as determined by ordinance of the City Council of Lessee from October 1, 2033 through September 30, 2043;
 - c. 75% of the Lessee's then published prevailing rate as determined by ordinance of the City Council of Lessee from October 1, 2043 through September 29, 2053;

Provided, however, that the Government shall not be required to take any quantity of such water and may take no water at, at its sole election;

The Government shall be responsible for the payment, at the prevailing rate, and any amount used in excess of the Discount Usage Quantity; and

- (iv) Lessee's design and installation of utility lines running from the Facility to provide the reclaimed water to the Nellis AFB golf course.

4.3. **Supplemental Rent.** All sums other than Base Rent and Additional Rent payable by the Lessee to the Government under this Lease, including but not limited to all items of reimbursement, such as reimbursement for police and fire protection services and water provided by the Government, shall be deemed supplemental rent ("Supplemental Rent"). Any request by the Government to the Lessee for reimbursement under this Lease shall identify the expenses included in such reimbursement request and the account into which such Supplemental Rents must be paid. For the purposes of this Lease, Base Rent, Additional Rent, and Supplemental Rent shall sometimes be collectively referred to as "Rent."

4.4. **Late Charges and Default Interest.** If any installment of Rent is not paid within ten (10) business days after its due date, then such arrearage shall, consistent with the Debt Collection Act of 1982 (31 U.S.C. § 3717), (i) bear interest from the due date at the rate prescribed by the Secretary of the Treasury for amounts past due to the Federal government until paid in full; (ii) include an administrative charge to cover the costs of processing and handling delinquent debts; and (iii) include an assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due.

4.5. The Lessee agrees, on request of the Air Force from time to time, to manage the delivery of in-kind consideration meeting the requirements of 10 USC § 2667, as amended, using the funds deposited in the In-Kind Consideration Account established in this lease. The Lessee and the Air Force shall enter into specific agreements for the delivery of such services.

4.6. **Rent Payments.** All Rent shall be paid without deduction, offset, prior notice, or demand as directed pursuant to this Lease.

CONDITION 5.

OPERATING AGREEMENT

5.1. The Operating Agreement dated of even date herewith is hereby incorporated into and made a part of this Lease (the "Operating Agreement"). The Operating Agreement sets forth certain detailed procedures and requirements to be followed by the Lessee in designing, demolishing, constructing, renovating, operating, and maintaining the Leased Premises. In the event of any amendment to the Operating Agreement, the amended Operating Agreement will be deemed to be substituted in lieu of the existing one.

5.2. The Lessee shall operate the Project in accordance with each of the following plans included as attachments to the Operating Agreement:

- Project Management Plan
- Development Plan
- Construction Management Plan
- Radioactive Material Use Plan
- Demolition Plan
- Communication Plan

Note: Confirm Specific Plans. If not already complete indicate drop dead date for delivery.

Each such plan shall be referred to in this Lease by the title stated above.

5.3. In the event of any inconsistency between any provisions of the Operating Agreement, as it presently exists or may be amended in the future, and any provisions of this Lease, the provisions of this Lease will control.

CONDITION 6.

USE OF LEASED PREMISES

6.1 The sole purpose for which the Project may be used in the absence of prior written approval of the Government for any other use, is for construction and operation of a wastewater treatment facility and for all other related lawful municipal purposes. The Lessee shall comply, at its own expense, with Applicable Laws. The Lessee shall not use or occupy the Leased Premises in any manner that is unlawful or dangerous or that shall constitute waste, unreasonable annoyance, or a nuisance to the Government.

Unless a waiver is granted by the Government, in no event shall the Leased Premises be used by the Lessee for any of the following:

Ultra-hazardous activities involving the storage, treatment, transportation, disposal, or manufacture of hazardous materials, hazardous substances, or hazardous wastes, except as specifically authorized by Condition 10.7.

Activities that adversely affect the health, safety, morals, welfare, morale, and discipline of the Armed Forces, such as the sale or use of drug abuse paraphernalia, illicit gambling, and prostitution.

Partisan political activities.

Activities by entities advocating the overthrow of the United States.

CONDITION 7.

DEFAULT, REMEDIES, AND TERMINATION

7.1. Any one or more of the following shall constitute an event of default ("Event of Default") under this Lease by the Lessee:

7.1.1. The Lessee's failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Government to the Lessee. If, however, such default is not reasonably susceptible to cure within such thirty (30) day period, the Lessee shall have such longer period as may be approved in writing in advance by the Government, which approval shall not be unreasonably withheld, to cure such default so long as the Lessee commences curing such default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the Government, which approval shall not be unreasonably withheld.

7.1.2. The failure of the Lessee to pay rent or comply with the rent terms pursuant to Section 4, when due and such failure remains uncured for a period of ten (10) days after written notice to the Lessee by the Government of the Lessee's failure to pay such amount.

7.1.3. The Lessee voluntarily files for bankruptcy protection under the United States Bankruptcy Code (the "Bankruptcy Code") or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against the Lessee by any creditor of the Lessee pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within sixty (60) days after filing.

7.1.3.1. If any voluntary or involuntary petition is filed under the Bankruptcy Code by or against the Lessee (other than an involuntary petition filed by or joined in by the Government), the Lessee shall not assert, or request any other party to assert, that the automatic stay under the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce, or inhibit the ability of the Government to enforce any rights it has by virtue of any agreement between the Parties, or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of the Lessee under such agreements. Furthermore, the Lessee shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to the Bankruptcy Code, to stay, interdict, condition, reduce, or inhibit the ability of the Government to enforce any of its rights under such agreements against any party responsible for the debts or obligations of the Lessee. The waivers contained in this Condition are a material inducement to the Government's willingness to enter into this Lease and the Lessee acknowledges and agrees that no grounds exist for equitable relief that will bar, delay, or impede the exercise by the Government of its rights and remedies under such agreements against the Lessee or any party responsible for the debts or obligations of the Lessee.

7.1.3.2. If any or all of the Project or any interest in the Project becomes the property of any bankruptcy estate or subject to any state or Federal insolvency proceeding, then the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under any agreement between the Parties, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to the Bankruptcy Code so as to permit the Government to pursue its rights and remedies at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting the Lessee's use of all "cash collateral," as defined under the Bankruptcy Code. In connection with such Bankruptcy Court orders, the Lessee shall not contend or allege in any pleading or petition filed in any court proceeding that the Government does not have sufficient grounds for relief from the automatic stay. The Lessee acknowledges and agrees that any bankruptcy petition or other action taken by the Lessee to stay, condition, or prevent the Government from exercising its rights or remedies under this Lease or any other agreement between the Parties shall be deemed to be in bad faith.

7.1.4. At the election of the Government and upon written notice thereof to the Lessee, the occurrence of a "In-kind Consideration Account ("ICA") Event of Default." As used

in this **Condition 7.1.4**, a "ICA Event of Default" means failure to comply with the ICA Requirements identified in **Condition 25**.

7.2. No Event of Default shall be deemed to have occurred for any period of time during which an "Excusable Delay," as defined in **Condition 24.21**, exists or the Lessee and the Government are attempting to resolve a dispute about an alleged default as provided in **Conditions 23.1 or 23.2**. For an Excusable Delay, the Lessee's period for cure shall be tolled for the period of time that the Excusable Delay exists. For a dispute, if, pursuant to the dispute resolution procedures set forth in **Conditions 23.1 and 23.2**, a default is determined to have occurred, the Lessee's period for cure shall not begin until the day after the final decision on the dispute is issued, and such default shall not become an Event of Default until any applicable cure period has expired.

7.3. This Lease may be terminated as provided below:

7.3.1. The Government may terminate this Lease upon written notice to the Lessee, and without any cost or liability to the Government, if an Event of Default exists. Such notice shall be referred to as a "Default Termination Notice" and shall be effective as of the date specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Lessee.

7.3.2. Either The Government or the Lessee may, terminate this Lease, upon written notice to the other Party in the event of Extensive Damage or Destruction of Improvements, as that term is defined in **Condition 15.5.2**. Such notice shall be referred to as a "Termination Notice for Extensive Damage or Destruction of Improvements" and shall be effective as of the date to be specified therein, which shall be at least thirty (30) days but not more than forty five (45) days after its receipt by the Lessee.

7.4. The Lessee hereby waives any claims or suits against the Government arising out of any termination of this Lease pursuant to **Condition 7.3**.

7.5. If an Event of Default exists and all notices of such Event of Default required by this Lease have been given, then the Government shall have the following rights and remedies in addition to all other rights and remedies available to the Government at law or in equity:

7.5.1. The Government shall have the right to enforce specific performance by the Lessee of its obligations under this Lease in any state or federal court of competent jurisdiction.

7.5.2. Subject to **Condition 7.6** below, the Government shall have the right to take possession of the Project and operate, repair, restore, maintain, manage, and use the Project in accordance with the provisions of this Lease.

7.5.3. Subject to **Condition 7.6** below, the Government shall have the right to obtain the appointment of a receiver to take possession of the Project and operate, repair, restore, maintain, manage, and use the Project in accordance with the provisions of this Lease.

7.5.4. Intentionally deleted.

7.5.5. The Lessee shall reimburse the Government for the cost of all repairs and maintenance by the Government.

7.5.6. The Government shall have the right to pursue more than one right or remedy at the same time.

7.6. The State of Nevada may, within ten (10) days of delivery of a Default Termination Notice, provide the Government with a notice of its intent to cure the Event of Default. If the State of Nevada provides such a timely cure notice and cures the Event of Default within thirty (30) days of the delivery of the Default Termination Notice, the Government shall not exercise its rights provided in **Conditions 7.5.2 or 7.5.3.**

CONDITION 8.

TAXES

8.1. Intentionally deleted.

CONDITION 9.

RESTORATION AND SURRENDER

9.1. No later than one hundred eighty (180) days after the Term Expiration Date, or the effective date of a Default Termination Notice pursuant to **Condition 7.3.1** or a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to **Condition 7.3.2**, as applicable, or a date mutually agreed to by Lessee and the Government (the "Restoration Deadline"), the Lessee shall remove the Facility and its other property from the Leased Premises and restore the Leased Premises to the reasonable satisfaction of the Government (Lessee's "Removal and Restoration Obligation").

9.2. Except to the extent not required because of a Government Retention Notice pursuant to **Condition 9.3**, no later than five (5) years prior to the Lease Termination Date or within forty-five (45) days after Lessee's receipt of a Default Termination Notice or a Termination Notice for Extensive Damage or Destruction of Improvements, the Lessee shall provide to the Government (a) a report (an "Improvement Removal Report") prepared by a construction and demolition expert approved by the Government, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all improvements on the Leased Premises and (b) a written plan which sets forth how Lessee proposes to discharge its removal and restoration obligations pursuant to this **Condition 9**. Funds to pay for such demolition and restoration shall be obtained from the Replacement Reserve Account, except as otherwise provided in **Condition 9.6.**

9.3. Notwithstanding anything to the contrary in this **Condition 9**, no later than five (5) years prior to the Term Expiration Date or concurrently with the delivery to Lessee of a Default Termination Notice or a Termination Notice for Extensive Damage or Destruction of Improvements, as applicable, the Government may provide written notice to Lessee of its

election to require that all or any portion of the Facility revert or be transferred to the Government, at no cost, on the Term Expiration Date or the effective date of any Default Termination Notice or Termination Notice for Extensive Damage or Destruction in lieu of the Lessee's Removal and Restoration Obligation and without additional consideration therefore (a "Government Retention Notice").

9.4. If the Government delivers a Government Retention Notice to Lessee in accordance with **Condition 9.3**, for all or any portion of the Facility and any personal property of the Lessee located therein, then on the Term Expiration Date, or the effective date of a Default Termination Notice pursuant to **Condition 7.3.1** or a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to **Condition 7.3.2**, the Lessee shall terminate its operations on the Leased Premises and vacate and surrender possession of the Leased Premises and the Facility and any personal property of the Lessee located therein described in the Government Retention Notice to the Government. Such reversion or transfer in lieu of Lessee's Removal and Restoration Obligation shall be automatic and at no cost to the Government. The Lessee shall execute any documentation reasonably requested by the Government to confirm or effect such conveyance, which conveyance shall be free and clear of any and all encumbrances other than those approved by the Government pursuant to **Condition 22**.

9.5. After completion of any demolition required pursuant to this **Condition 9** of all or any portion of the at grade, above-grade and below-grade structures, buildings and improvements of any kind whatsoever placed or maintained on the Leased Premises, whether placed thereon or maintained by Lessee or others before or after the Term Beginning Date, including, but not limited to, concrete foundations, pilings, structures and buildings, Lessee shall immediately restore, and quit, and peacefully surrender possession of, the Leased Premises to the Government in good, usable, and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps other than those existing prior to the removal of such structures.

9.6. If the Lessee fails, refuses, or neglects to satisfy its removal and restoration obligations pursuant to this **Condition 9**, then at the option of the Government the Facility and any personal property of the Lessee located therein shall either become the property of the Government without compensation therefore, or the Government may cause it to be removed and/or destroyed and the Leased Premises to be so restored at the expense of the Lessee, and no claim for damages against the Government, its officers, employees, agents, or contractors shall be created by or made on account of such removal and/or destruction and restoration work. The Lessee shall reimburse the Government for any expenses it incurs to restore the Leased Premises to the condition required by this **Condition 9** within thirty (30) days after the Government provides written notice to Lessee of the reimbursement amount together with reasonable documentary support for the reimbursement amount.

9.7. Unless the Government delivers a Government Retention Notice to Lessee for all of the Facility, then during the period after the Term Expiration Date, the effective date of a Default Termination Notice or the effective date of a Termination Notice for Extensive Damage or Destruction of Improvements, as applicable, until the date on which Lessee satisfies its obligations under **Condition 9.1** or such later date as may be provided, all obligations set forth in **Condition 10, 12, and 14** shall remain in full force and effect.

CONDITION 10.

ENVIRONMENTAL PROTECTION

10.1. The Lessee shall comply with Applicable Laws that are or may become applicable to Lessee's activities on the Leased Premises.

10.2. The Lessee shall obtain at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits.

10.3. The Lessee shall indemnify, defend, save, and hold harmless the Government from any claims for damages, response, remediation or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Applicable Laws.

10.3.1. This **Condition 10.3** survives the expiration or termination of this Lease, and the Lessee's obligations under this **Condition 10.3** shall apply whenever the Government incurs costs or liabilities of the types described in this **Condition 10**.

10.3.2. **Asbestos-Containing Materials (ACM).** The Lessee is warned that the Leased Premises may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Lessee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. Prior to undertaking such development activities, the Lessee is responsible for inquiring as to whether the Government has records of the location, type, quantity, and characteristics of asbestos in any improvements prior to renovation, maintenance, repairs, or construction that may disturb suspect materials. If the Government does not have adequate records to substantiate the status or presence of ACM, the Lessee is required to obtain the necessary confirmatory samples and obtain analysis by a State of Nevada certified laboratory for the analysis of bulk materials for asbestos. The Government is not responsible for any handling, removal or containment of asbestos or ACM, or to the extent consistent with applicable law, for any liability related thereto. The Lessee will perform any and all asbestos work in accordance with Applicable Laws. Lessee personnel will be trained and certified as required in accordance with the State of Nevada's asbestos administrative code. The Lessee will be responsible for removal and disposal of all ACM in the improvements on the Leased Premises and will incorporate an asbestos disposal plan in the plans for renovation or demolition on the Leased Premises to be submitted to the Government in accordance with **Condition 17** of this Lease. The asbestos disposal plan will identify the proposed disposal site for the asbestos. Removal and disposal of ACM must be carried out in compliance with all applicable federal, state, and local laws, rules, regulations, and standards. The Lessee further acknowledges that the Government assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Lessee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on or from the

Leased Premises, whether the Lessee has properly warned, or failed to properly warn, the persons injured.

10.4. Reserved

10.4.1. Lead-Based Paint. The Lessee recognizes and acknowledges that lead based paint materials ("LBP") may be present on exterior and interior surfaces of facilities within the Leased Premises or in the soil. The Lessee will be responsible at its sole cost and expense for the management, maintenance, removal and disposal of all LBP either located in or attributable to the Facility. Removal and disposal of LBP must be carried out in compliance with Applicable Laws.

10.4.2. Reserved

10.5. Notwithstanding any other provision of this Lease to the contrary, and except as provided in this Condition, the Lessee, as between the Parties, does not assume any liability (including liability to third parties) or responsibility for environmental impacts and damage caused by the Government's use of toxic or hazardous wastes, substances, or materials on any portion of Nellis AFB, including the Leased Premises. The Lessee has no responsibility or obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage solely arising out of the use of or release of any toxic or hazardous wastes, substances, or materials on or from any part of Nellis AFB, including the Leased Premises, occurring prior to the Term Beginning Date. Further, the Lessee shall have no obligation to undertake environmental response, remediation, or cleanup relating to such use or release. As used in this Condition 10, the terms "toxic or hazardous wastes, substances or materials" shall include any flammables, explosives, radioactive materials, or other hazardous wastes, substances, or materials including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. §§ 9601-9675), the Hazardous Materials Transportation Act, and the Resource Conservation and Recovery Act ("RCRA"), all as now or hereafter amended. The Government acknowledges that pursuant to section 120 of CERCLA, the Government is subject to liability imposed by section 107 of CERCLA to the extent that it is responsible for the release or disposal of a hazardous substance on the Leased Premises. The Government agrees, as between the Parties, that it will not consider, or seek to have others consider, the Lessee a potentially responsible Party solely due to the presence of a hazardous substance on the Leased Premises on the Term Beginning Date, provided that the Lessee has not by its acts or omissions caused a further release of such hazardous substance, released or disposed of new or additional hazardous substances, or increased the cost of a required response action. Nothing in this acknowledgment shall be construed to affect the liability of any person or entity, including the Lessee, under sections 106 or 107 of CERCLA.

10.5.1. For the purposes of this Condition 10, "defense" or "environmental response, remediation, or cleanup" includes liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupancy" or "use" shall mean any activity or presence (including preparation and construction) in or upon the Leased Premises.

10.5.2. This Condition does not relieve the Lessee of any obligation or liability the Lessee might have or acquire with regard to third parties or regulatory authorities by operation of law.

10.5.3. This Condition shall survive the expiration or termination of this Lease.

10.6. The Lessee must comply with Applicable Laws relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

10.7. Hazardous Waste. Except as provided in this Condition for the temporary accumulation of toxic or hazardous material on the Leased Premises and except as reasonably related to the uses set forth in Condition 6, the Lessee must obtain written Government approval, as required by 10 U.S.C. § 2692, prior to storing, treating, or disposing of any toxic or hazardous material on the Leased Premises. Toxic or hazardous material includes any material that is a "hazardous substance" under section 101(14) of CERCLA, or designated a "hazardous substance" by the U.S. Environmental Protection Agency under section 102 of CERCLA. The Lessee shall strictly comply with the hazardous waste permit requirements under RCRA, as amended, or its Nellis equivalent and Applicable Laws. The Lessee shall be liable for any violations of the requirements set forth in this Condition 10.7.

10.7.1. The Lessee must provide, at its own expense, such hazardous waste accumulation points, complying with all laws and regulations, as it may need for the temporary accumulation of hazardous wastes prior to such wastes being disposed of in accordance with Applicable Laws. The Lessee will not use Government accumulation points for hazardous and other wastes and the Lessee will not permit its hazardous waste to be commingled with hazardous wastes of the Government.

10.7.2. Any violation of the requirements of this Condition 10.7 constitutes a material breach of this Lease.

10.8. On or before the Effective Date, the Government shall provide the Lessee access to the Nellis AFB Installation Restoration Program ("IRP") records, if any, and thereafter shall provide to the Lessee a copy of any amendments to or restatements of the Nellis AFB IRP records affecting the Leased Premises. The Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to the Nellis AFB IRP may impact the Lessee's quiet use and enjoyment of the Leased Premises. The Lessee agrees that notwithstanding any other provision of this Lease, the Government shall have no liability to the Lessee should implementation of the Nellis AFB IRP or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Lessee's use of the Leased Premises. The Lessee shall have no claim or cause of action against the United States, or any officer, agent, employee, contractor, or subcontractor thereof, on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the Nellis AFB IRP or under this Lease or otherwise.

10.9. The Government and its officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the Lessee, to enter upon the Leased Premises for the purposes enumerated in this Condition.

10.9.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water samplings, testpitting, testing soil borings, and other activities related to the Nellis AFB IRP;

10.9.2. To inspect field activities of the Government and its contractors and subcontractors in implementing the Nellis AFB IRP;

10.9.3. To conduct any test or survey related to the implementation of the Nellis AFB IRP or environmental conditions at the Leased Premises or to verify any data submitted to the United States Environmental Protection Agency (EPA) or the Nellis Department of Natural Resources by the Government relating to such conditions; and

10.9.4. To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the Nellis AFB IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

Any investigations and surveys, drilling, testpitting, test soil borings, and other activities undertaken pursuant to this Condition shall be conducted in a manner that is as inconspicuous as practicable. Any monitoring wells, pumping wells, and treatment facilities required pursuant to this Condition shall be designed and installed to be as inconspicuous as practicable. The Government shall attempt to minimize any interference with the Lessee's quiet use and enjoyment of the Leased Premises arising as the result of such wells and treatment facilities. The Government shall, subject to the availability of appropriations therefore, repair any damage caused by its exercise of the rights in this paragraph.

10.10. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the Nellis AFB IRP (to the extent the Lessee has received notice thereof), or any hazardous substance remediation or response agreement of the Government with environmental regulatory authorities (to the extent the Lessee receives notice thereof if the agreement is not of public record) during the course of any of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and any assignees, licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof, except to the extent permitted under Federal law, including the Federal Tort Claims Act.

10.11. The Lessee must maintain and make available to the Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records required by Applicable Laws. The Government's rights under this Lease specifically include the right for Government officials to inspect the Leased Premises, upon reasonable notice as provided under **Condition 13**, for compliance with Applicable Laws, including environmental laws, rules, regulations, and standards, particularly those relating to the generation, handling, storage, treatment, and disposal

of hazardous waste, as well as to the discharge or release of hazardous substances, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Violations identified by the Government will be reported to the Lessee and to appropriate regulatory agencies, as required by applicable law. The Lessee will be liable for the payment of any fines and penalties that may be imposed as a result of the actions or omissions of the Lessee.

10.12. The Lessee shall have an approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. The plan shall comply with all applicable requirements and shall be updated as required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan. The plan shall be independent of Government spill prevention and response plans. Except for initial fire response and/or spill containment, the Lessee shall not rely on use of Nellis AFB personnel or equipment in execution of its plan. The Lessee shall file a copy of the approved plan and approved amendments thereto with the Government within fifteen (15) days of approval. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee or because the Lessee was not, in the opinion of the Government, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs as Supplemental Rent, and in accordance with Applicable Laws.

10.13. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), the Lessee shall prepare a plan for storage, mixing, and application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall be sufficient to meet Applicable Laws. The Lessee shall store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

10.14. The Lessee shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable state or local requirements. If the Lessee discharges wastewater to a publicly or federally owned treatment works, the Lessee must submit a Pretreatment Permit Application prior to the Term Beginning Date. The Lessee will be responsible for meeting all applicable wastewater discharge permit standards. The Lessee will not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to Nellis AFB. The Lessee shall make no use of any septic tank installed on Nellis AFB.

10.15. The Lessee must notify the Government of the Lessee's intent to possess, store, or use any "licensed or licensable source or by product materials," as those terms are defined under the Atomic Energy Act and its implementing regulations; of the Lessee's intent to possess, use, or store radium; and of the Lessee's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon Nellis AFB. Upon notification, the Government may impose such requirements, including prohibition of possession, use, or storage, as deemed necessary to adequately protect health and the human environment. Thereafter, the Lessee must notify the Government of the presence of all licensed

or licensable source or by product materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that the Lessee need not make either of the above notifications to the Government with respect to source and by product material that is exempt from regulation under the Atomic Energy Act. The Lessee shall not, under any circumstances, use, own, possess, or allow the presence of special nuclear material on the Leased Premises.

10.16. The Lessee will comply with the Nellis AFB water conservation policy, as amended from time to time (to the extent that such policy exists and the Lessee receives copies thereof), from the Term Beginning Date through the Completion Date. After the Completion Date, the Lessee shall comply with all of Clark County, Nevada water conservation policies.

10.17. The Lessee will use all reasonable means available to protect environmental and natural resources, consistent with Applicable Laws and this Lease. Where damage nevertheless occurs, arising from the Lessee's activities, the Lessee shall be fully liable for any such damage.

10.18. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, the Lessee shall immediately notify the Government and protect the site and the material from further disturbance until the Government gives clearance to proceed.

10.19. The Lessee acknowledges that the surface soil on the Leased Premises may contain elevated levels of pesticides and pesticide-related chemicals applied in the normal course of maintaining the Leased Premises. The Lessee shall manage all such soil on the Leased Premises in accordance with the requirements of any Applicable Laws. The Government will not be responsible for injury or death of any person affected by such soil conditions whether the person is warned or not. The Lessee recognizes and acknowledges that chlordane, applied in the normal course of maintaining the Leased Premises, may be present in soil under or in the area immediately surrounding some building foundations on the Leased Premises and that such soils must be tested and evaluated for chlordane before excavation occurs. The Lessee shall be responsible, at its sole cost and expense, for any testing or evaluation of chlordane required in connection with such conditions on the Leased Premises, including without limitation any testing and evaluation required under Applicable Laws. To the extent that environmental testing detects chlordane on any portion of the Leased Premises, the Lessee shall, at its sole cost and expense, manage such chlordane in place to the fullest extent permitted under Applicable Laws; provided, however, that the Lessee may request written consent from the Government to remove contaminated soil as permitted under Applicable Laws, which consent shall not be unreasonably withheld. The provisions of **Condition 10.7** shall apply to such chlordane only to the extent that it cannot be managed in place under Applicable Laws.

10.20. Required Notices. If at any time either Party shall become aware, or have reasonable cause to believe, that any toxic or hazardous wastes, substances, or materials have been released or have otherwise come to be located on or beneath the Leased Premises in amounts greater than either the reportable quantities or a level requiring response action(s) under an Applicable Law, such Party shall immediately upon discovering the release or the presence or suspected presence of the toxic or hazardous wastes, substances, or materials, give written notice

of that condition to the other Party. In addition, the Party first learning of the release or presence of any toxic or hazardous wastes, substances, or materials on or beneath the Leased Premises, shall immediately notify the other Party in writing of: (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Applicable Law; (ii) any claim made or threatened by any person against the Government, the Lessee, or the Leased Premises arising out of, or resulting from, the release or presence of toxic or hazardous wastes, substances, or materials; and (iii) any reports made to any local, state, or Federal environmental agency arising out of, or in connection with, any toxic or hazardous wastes, substances, or materials.

CONDITION 11.

MAINTENANCE OF LEASED PREMISES

11.1. The Lessee, at no expense to the Government, shall at all times preserve, maintain, repair, and manage the Leased Premises and Facility in an acceptable, safe, and sanitary condition in accordance with this Lease and the Operating Agreement.

11.1.1. The Lessee shall be responsible for the operation and maintenance of the utility systems owned by it within the Leased Premises, including, but not limited to, water, gas, TV, electric, sanitary sewer, and storm systems. The Government assumes no responsibility under this Lease for maintenance and operation of utility systems not owned by the Government, or for utility easements across the Leased Premises.

11.1.2. The Lessee shall at all times maintain all roads, streets, curbing, sidewalks, parking areas, access drives, and appurtenant drainage thereto within the Leased Premises in good condition and keep them free of debris and obstructions of any kind. The Lessee shall keep roads, streets, and common paved areas (including common sidewalks) free of ice and snow.

11.1.3. [Reserved]

11.2. If the Lessee damages or destroys any real or personal property of the Government other than as contemplated by the Site Development Plan, the Lessee shall promptly repair or replace such real or personal property to the reasonable satisfaction of the Government. In lieu of such repair or replacement, the Lessee shall, if so required by the Government, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property, including natural resources.

CONDITION 12.

COMPLIANCE WITH APPLICABLE LAWS

12.1. The Lessee shall comply, at its sole cost and expense (except for matters for which the Government remains obligated hereunder pursuant to **Condition 10**), with Applicable Laws.

12.2. The Lessee shall comply with Applicable Laws with regard to construction, sanitation, licenses, or permits to do business, protection of the environment, pollution control and abatement, occupational safety and health, and all other related matters. The Lessee shall comply with the building codes of the City of North Las Vegas, to the extent they are applicable.

12.3. The Lessee's use of the Leased Premises, including construction, demolition, and disposal, use, operation, maintenance, repair, and replacement of buildings and facilities, shall at a minimum conform to the Construction Requirements, as defined in **Condition 17**. In the event of conflict among any of the Construction Requirements, the most stringent requirement shall govern.

12.4. The Lessee will be responsible for and obtain, at its sole expense, prior to the commencement of construction and demolition, and upon completion of the building of the Facility, any approvals, permits, or licenses that may be necessary to construct, occupy, and operate the Project in compliance with Applicable Laws.

12.5. Nothing in this Lease shall be construed to constitute a waiver of Federal supremacy or Federal sovereign immunity. Only laws and regulations applicable to the Leased Premises under the Constitution and statutes of the United States are covered by this Condition. The United States presently exercises proprietary federal jurisdiction over the Leased Premises. The Government reserves the right to change the jurisdiction.

12.6. Responsibility for compliance as specified in this **Condition 12** rests exclusively with the Lessee. The Government assumes no enforcement or supervisory responsibility, except with respect to matters committed to its jurisdiction and authority. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Lessee's use and occupation of the Leased Premises.

12.7. The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Government, the validity or application of any law, ordinance, order, rule, regulation, or requirement of the nature referred to in this **Condition 12**. The Government shall not be required to join in or assist the Lessee in any such proceedings.

CONDITION 13.

ACCESS AND INSPECTION

13.1. Any agency of the United States, its officers, agents, employees, contractors, and subcontractors may enter upon the Leased Premises and into Facility, at all reasonable times for any purposes not inconsistent with the Lessee's quiet use and enjoyment of them under this Lease, including but not limited to confirming compliance by the Lessee with the terms of this Lease. The Government normally will enter the Leased Premises during regular business hours of Lessee and give the Lessee at least one week's prior notice of its intention to do so, unless it determines the entry is required for safety, environmental, operations, or mission security

purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof.

CONDITION 14.

GENERAL INDEMNIFICATION BY LESSEE

14.1. Except as otherwise provided in this Lease, the Government shall not be responsible for damages to property or injuries or death to persons that may arise from, or be attributable or incident to, the condition or state or repair of the Leased Premises, or the use and occupation of the Leased Premises, or for damages to the property of the Lessee, or injuries or death of the Lessee's officers, agents, servants, or employees, or others who may be on the Leased Premises at their invitation or the invitation of any one of them.

14.2. Except as otherwise provided in this Lease, the Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Leased Premises by the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Leased Premises for the purpose of performing official duties) who may be on the Leased Premises at their invitation or the invitation of any one of them (the "Lessee Parties"), or the activities conducted by or on behalf of the Lessee Parties under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, bodily injury, or death caused by, or occurring as a consequence of, such possession and/or use of the Leased Premises by the Lessee Parties, or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees, to the extent permitted by Applicable Laws, to indemnify, save, and hold harmless the Government, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon, bodily injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Leased Premises, or any activities conducted or services furnished by or on behalf of the Lessee Parties in connection with, or pursuant, to this Lease, and all claims for damages against the Government arising out of, or related to, the Lease. The agreements of Lessee contained in this Condition 14.2 do not extend to claims caused by the negligence or willful misconduct of officers, agents, contractors, or employees of the United States without contributory fault on the part of any other person, firm, or corporation. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon as practicable after learning of it.

CONDITION 15.

INSURANCE

15.1. The Lessee shall in any event and without prejudice to any other rights of the Government bear all risk of loss or damage or destruction to the Facility, and any building(s), improvements, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Government, provided, however, the Government shall not be relieved of responsibility for loss or damage that is solely the result of the gross negligence or willful

misconduct of the Government to the extent such loss or damage is not covered by coverage of insurance required under this Lease and (ii) to the extent recovery is authorized under Applicable Laws including the Federal Tort Claims Act.

15.2. The Lessee is a self-insured municipality and shall ensure appropriate insurance is in place for the Lease Premises.

15.2.1. Intentionally deleted.

15.2.2. Intentionally deleted.

15.3. Intentionally deleted.

15.3.1. Intentionally deleted.

15.3.2. Intentionally deleted.

15.3.3. Intentionally deleted.

15.4. Intentionally deleted.

15.5. In the event that any part of the Project is damaged (except de minimis damage) or destroyed, the risk of which is assumed by the Lessee under **Condition 15.1** ("Damaged or Destroyed Property"), the Lessee shall promptly give notice thereof to the Government.

15.5.1. The Lessee shall, as soon as reasonably practicable after the casualty, restore the Damaged or Destroyed Property as nearly as possible to the condition that existed immediately prior to such loss or damage, subject to **Condition 15.5.2**.

15.5.2. In the event that the Government in consultation with the Lessee determine that the magnitude of Damaged or Destroyed Property is so extensive that the Project cannot be used by the Lessee for its operations and the repairs, rebuilding, or replacement of the Damaged or Destroyed Property cannot reasonably be expected to be substantially completed within nine (9) months of the occurrence of the casualty ("Extensive Damage or Destruction of Improvements"), either Party may terminate this Lease as provided in **Condition 7.3.2**. In the event that the Government shall determine that an Extensive Damage or Destruction of Improvements has not occurred, then neither Party shall have the right to terminate this Lease. . If the Parties mutually agree to repair, rebuild, and replace less than all Damaged or Destroyed Property, then neither Party shall have the right to terminate this Lease as provided in **Condition 7.3.2** with respect to the Leased Premises on which the Damaged or Destroyed Property that will be repaired, rebuilt, and replaced is situated.

15.5.3 Unless this Lease is terminated pursuant to **Condition 7.3.2**, any insurance proceeds received as a result of any casualty loss to the Project shall be applied in the following order of priority: (i) first, to restoring the damaged area and removing any related debris to the reasonable satisfaction of the Government; (ii) second, to repairing, rebuilding, and/or replacing the Facility and the damaged area to the reasonable satisfaction of the Government; (iii) third, the excess, if any, shall be paid to the Lessee. If this Lease is terminated pursuant to **Condition**

7.3.2, then any insurance proceeds received as a result of any casualty loss to the Project shall be applied to the restoration of the Leased Premises in accordance with **Condition 9**.

CONDITION 16.

[Reserved]

CONDITION 17.

CONSTRUCTION OF FACILITY AND ALTERATIONS

17.1. This Lease is subject to, and conditioned on, the Lessee's satisfying the requirements of the Operating Agreement, the Lessee's demolishing, constructing and completing (or arranging for the construction and completion of) certain buildings, structures, and improvements on the Leased Premises in accordance of this Lease. It is specifically understood that (i) the Lessee's activities undertaken pursuant to this Lease constitute demolition, design, construction, renovation, operation and maintenance of the Facility is a private undertaking; (ii) title to the Facility shall be vested in the Lessee, subject to the terms of this Lease and the Quitclaim Deed; and (iii) the Government's sole and exclusive interest in and liability under this Lease are limited to that of lessor of the Leased Premises. The Lessee shall not be entitled to receive from the Government and the Government shall not be obligated to pay to the Lessee any monetary consideration for the Lessee's activities undertaken pursuant to this Lease, demolition, design, construction, renovation, operation and maintenance of the Facility contemplated by renovation, operation, and maintenance of the Facility contemplated by this **Condition 17**.

17.1.1. The Development Plan has been approved by the Government. The Lessee's development activities undertaken pursuant to this Lease shall be performed as specified in the approved Development Plan.

17.1.2. If at any time the Lessee wants to propose changes to the Development Plan previously approved by the Government, the Lessee shall submit the proposed changes ("Plan Alterations") to the Government for the Government's approval, such approval not to be unreasonably withheld. Plan Alterations must be prepared, signed and certified by a duly qualified architect registered in the state of Nevada. If the Government does not disapprove such Plan Alterations within twenty (20) days after receipt, such Plan Alterations shall be deemed approved.

17.2. Intentionally deleted.

17.3. The Government and its representatives, agents, and employees shall have access to the Leased Premises and Facility before, during, and after construction of the Facility shown in the Final Plans for purposes of monitoring, observing, making inquiries, and taking samples of materials for testing as may be necessary to evaluate the physical characteristics of such Facility, as well as such other matters as the Government deems to be reasonably necessary for the Government to determine the Lessee's compliance with the Construction Requirements. The Parties expressly understand and agree that: (i) any such inspection activity by the Government

shall not relieve the Lessee of its responsibility for constructing, operating, maintaining, and managing the Facility pursuant to, and in accordance with, the Construction Requirements; (ii) failure of the Government to make any such on-site inspection or conduct such testing shall not limit, or be construed to limit, any of the Government's rights under this Lease, including its right to require the Lessee to construct the Facility shown in the Final Plans in accordance with the Construction Requirements; and (iii) no action by the Government shall be deemed to be confirmation that the Facility shown in the Final Plans comply with the Construction Requirements and Applicable Laws. Failure to complete the development activities undertaken pursuant to this in accordance with the Construction Requirements shall constitute an Event of Default if the Lessee does not correct such failure within the cure period provided in **Condition 7.1.1**.

17.4. Intentionally deleted.

17.5. Intentionally deleted.

17.6. During the Lease Term, the Lessee shall have the right at its sole cost and expense, to install such of its own machinery and equipment, to make improvements, and to attach such removable fixtures in or upon the Leased Premises as may be necessary for its use of the Leased Premises pursuant to this Lease; and to remove such machinery, equipment, minor improvements, and removable fixtures at any time prior to the expiration or earlier termination by the Lessee of this Lease. In the event of termination of this Lease by the Government, the Lessee shall have a reasonable period of time following the effective termination date, as determined by the Government, to remove such property.

17.7. The Lessee shall not construct any permanent structure on the Leased Premises except as set forth in the Final Plans, and shall not construct any temporary structure or advertising sign on them, or make structural modifications, alterations, or additions to them, without the prior written consent of the Government, which shall not be unreasonably withheld or delayed.

17.8. All construction provided for in the Final Plans shall be without cost or expense to the Government, unless otherwise agreed in writing by the Parties.

17.9. Subject to **Condition 9**, title to the Facility shall be vested in the Lessee throughout the Lease Term.

17.10. Reserved

17.11. Intentionally deleted.

17.12. Intentionally deleted

17.13. Intentionally deleted.

CONDITION 18.

UTILITIES AND SERVICES

18.1. Intentionally deleted.

18.1.1. The Parties understand and agree that the construction, maintenance, and repair of all utility distribution and collection systems, conveyed to the Lessee all connections to the facilities, conduits, and the connections to existing Nellis utility mains, and the purchase, installation, maintenance, and repair of all meters, shall be without cost to the Government.

18.1.2. The Lessee shall be responsible for the expenses of all utilities. All newly constructed facilities shall be individually metered, or at least have provisions for future meters (meter sockets, gas loops, etc.). Existing facilities shall be metered as provided in the Development Plan.

18.1.3. The Lessee shall be responsible at its expense for all janitorial services, refuse collection, building maintenance, and grounds maintenance for the Leased Premises as set forth in the Development Plan.

18.1.4. The Lessee will pay the charges for any utilities and services furnished by the Government to the Lessee in connection with its use or operation of the Project. The charges and the method of payment for each utility or service will be determined by the appropriate supplier of the utility or service in accordance with Applicable Laws, on such basis as the appropriate supplier of the utility or service may establish.

18.1.5. The Parties understand and agree that the Government in no way warrants the continued provision, maintenance, or adequacy of any utilities or services it may furnish to the Lessee. The Parties also understand and agree that the Government, where economically feasible, intends to divest itself of its currently owned electric and natural gas distribution systems during the Lease Term. The Government may elect in its sole and absolute discretion to cease furnishing any utilities or services, and shall provide written notice to Lessee at least one (1) year prior to its termination of such utilities. In the event that the Government notifies Lessee of its intent to cease furnishing any of the utilities or services that are being provided on the Effective Date, the Government shall enter into good-faith negotiations with Lessee for the orderly transfer of such utility system(s) and shall fully cooperate with Lessee in obtaining any necessary approvals, agreements, and/or permits for the transfer and operation of such system(s).

18.2. Any purchase of utility services from the Government is subject to **Conditions 18.2.1 and 18.2.2.**

18.2.1. The sale of any utility service by the Government will be in accordance with 10 U.S.C. § 2686 and Air Force Instruction (AFI) 32-1061, Providing Utilities to US Air Force Installations, as the same may be amended, modified or superseded from time to time.

18.2.2. The Lessee agrees to enter into a separate contract for each utility service procured under this Condition 18 at rates to be specified in each contract in accordance with Air Force instructions and regulations.

18.2.3. The Government shall provide fire, law enforcement services, and other emergency services to the border of the Leased Premises. The Lessee shall reimburse the Government for any "direct expenses and losses" (as defined by 44 CFR 151.12 (2005)) in providing such services to the Leased Premises. For reimbursement, the Government shall submit a claim in a form substantially equivalent to that of 44 CFR 151.11 (2005) to the City Manager of the Lessee. The Lessee shall otherwise provide fire, law enforcement services, and other emergency services on the Leased Premises.

CONDITION 19.

OPERATION AND MANAGEMENT OF THE PROPERTY

19.1. The Lessee, at its sole cost and expense, shall operate and maintain the Leased Premises and the Facility in accordance with Applicable Laws; the Operating Agreement identified in **Condition 5**; and all of the terms and conditions of this Lease.

19.2. Reserved

19.3. Reserved

CONDITION 20.

NOTICES

20.1. Whenever the Government or the Lessee renders upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication with respect to this Lease or with respect to the Leased Premises and any improvements located thereon, each such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served by personal delivery to the Party or Parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication is directed or by mailing the same, in duplicate, to such Party or Parties through a national recognized and reputable overnight delivery service at the regular mailing address for the parties specified below. In the latter case, delivery shall be effective on the date confirmed by the records of such service.

If intended for the Lessee:

City of North Las Vegas
Utilities Director
2829 Fort Sumter
North Las Vegas, Nevada 89030

With a copy to:

City of North Las Vegas
Attention: City Manager

City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada 89030

If intended for the Secretary of the Air Force:

Department of the Air Force
Director, Air Force Real Property Agency
143 Billy Mitchell Blvd., Suite 1
San Antonio, TX 78226
**(all notices, requests and other
communications to any party)**

with copies to:

Department of the Air Force
Office of the General Counsel
(Environment & Installations)
Chief Counsel
143 Billy Mitchell Blvd., Suite 1
San Antonio, TX 78226

**(all notices, requests and other
communications to any Party)**

and

AFRPA/COO

143 Billy Mitchell Blvd., Suite 1
San Antonio, TX 78226

and

Ms Deb Stockdale,
Asset Manager
99 CES/CEA
Nellis AFB, Nevada 89191

or at such other address or addresses as the Government or the Lessee may from time to time designate by notice given by certified mail.

20.2. Every notice, demand, order, direction, determination, requirement, consent or approval, request, or communication hereunder shall be personally served, sent by certified first-class mail, return receipt requested, or by recognized overnight delivery service. Any such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be deemed to have been delivered on the date of the receipt of such delivery or transmission at the address set forth above (or such other address designated pursuant

hereto), or, if sent by certified first-class mail, return receipt requested, and delivery is refused, upon the date of refusal to accept service.

CONDITION 21.

ASSIGNMENT AND LICENSES

21.1. The Lessee shall not assign this Lease or any interest therein, or in any property on the Leased Premises, without the prior written consent of the Government.

21.1.1. Any assignment granted by the Lessee shall be consistent with all of the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. No assignment shall relieve the Lessee of any of its obligations hereunder.

21.1.2. The Lessee shall furnish the Government, for its prior written consent, a copy of each assignment it proposes to execute. Such consent may include the requirement to delete, add, or change provisions in the assignment instrument as the Government shall deem necessary to protect its interests. Consent to any assignment shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the Parties under this Lease. Consent or rejection of any required changes shall be provided within ten (10) business days of receipt of the proposed agreement.

21.1.3. Any assignment must include the provisions set forth in **Condition 10** of this Lease and expressly provide that the assignment, as the case may be, is subject to all of the terms and conditions of this Lease; the assignee, as the case may be, shall assume all of the Lessee's obligations and responsibilities under the Operating Agreement; and in case of any conflict between any provisions of this Lease and any provisions of the assignment, this Lease will control. A copy of this Lease and the current Operating Agreement must be attached to the assignment.

21.1.4. Failure to comply with this **Condition 21.1** shall constitute a breach of this Lease by the Lessee. The Government shall not be obligated to recognize any right of any person or entity to an interest in this Lease, or to own or operate any facilities and/or improvements or conduct any other activity or activities on the Leased Premises authorized under this Lease acquired in violation of this **Condition 21**.

CONDITION 22.

LIENS AND MORTGAGES

22.1. Except as provided in **Condition 22.2**, the Lessee shall not: (i) engage in any financing or other transaction creating any mortgage or security interest upon the Leased Premises or any Facility; (ii) place or suffer to be placed upon the Leased Premises or any Facility any lien or other encumbrance; (iii) suffer any levy or attachment to be made on the Lessee's interests in the Leased Premises or any Facility; or (iv) pledge, mortgage, assign,

encumber, or otherwise grant a security interest in the Leased Premises or any Facility or the rents, issues, profits, or other income of the Leased Premises or any Facility located thereon.

22.2. During the Lease Term, the Lessee may encumber by mortgage, deed of trust, or security agreement its interest in the Leased Premises or any Facility to secure one or more loans, subject to **Condition 22.3**. The proposed holder of any such mortgage, deed of trust, or security agreement must be approved in writing by the Government prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed. No mortgage or deed of trust shall extend to or affect the fee, the reversionary interest, or the estate of the Government in the Leased Premises. No mortgage, deed of trust, or security agreement shall be binding upon the Leased Premises until it is approved by the Government and a copy thereof has been delivered to the Government.

22.3. The Lessee shall notify the Government promptly of any lien or encumbrance on the Leased Premises, or the Lessee's interest in the Leased Premises or any Facility, whether created by act of the Lessee or otherwise, of which the Lessee has notice.

CONDITION 23.

DISPUTES

23.1. Disputes under this Lease are subject to Contract Disputes Act of 1978, as amended, 41 U.S.C. sections 601 *et seq.*

23.2. Disputes Valued at More than \$10,000 (exclusive of interest). The Lessee and the Government agree that the following procedures constitute the administrative procedures that must be exhausted with respect to any dispute arising under or related to this Lease involving more than \$10,000 (exclusive of interest) before the Lessee or the Government may pursue any other remedy that is available to it pursuant to this Lease or law.

23.2.1. Any dispute involving more than \$10,000.00 (exclusive of interest) shall be decided by the Director, AFRPA. The Director, AFRPA, shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the Director, AFRPA, shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the decision, the Lessee appeals the decision, by certified mail, to the Secretary, and delivers a copy of its appeal to the Director, AFRPA, by certified mail.

23.2.2. The Secretary shall render a decision by a date mutually agreed upon by the Parties. Either Party shall have the right to appeal the decision of the Secretary or his or her authorized representative to a court of competent jurisdiction in a timely manner, consistent with **Condition 23.3**; otherwise the decision of the Secretary shall be final.

23.3. Judicial Review. The Lessee or the Government, after exhausting the administrative remedies specified in **Condition 23.2.2**, may:

23.3.1. Pursue any remedy available to it under the law; or

23.3.2. Before or in conjunction with pursuing any remedy that is available to it under law, by mutual agreement, submit the dispute to an alternative dispute resolution procedure, other than binding arbitration, authorized by the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-581).

23.4. The Parties understand and agree that the Government's obligation to make any payment pursuant to this Lease is contingent upon the availability of appropriated funds proper for such payment.

23.5. In connection with any dispute between the Parties, each of the Lessee and the Government shall be afforded an opportunity to be heard and to offer evidence in support of its position.

CONDITION 24.

GENERAL PROVISIONS

24.1. **Covenant Against Contingent Fees.** The Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

24.2. **Officials Not to Benefit.** No Member of or Delegate to the Congress of the United States of America or Resident Commissioner of the United States of America, shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

24.3. **Facilities Nondiscrimination.** As used in this Condition, the term "facility" means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

24.3.1. The Lessee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided on the Leased Premises. This does not require the furnishing to the general public the use of any facility customarily furnished by the Lessee solely to Tenants or to Government military and civilian personnel, and the guests and invitees of any of them.

24.3.2. The Parties agree that in the event of the Lessee's noncompliance, the Government may take appropriate action to enforce compliance, may terminate this Lease for

default and breach as provided in **Condition 7** above, or may pursue such other remedies as may be provided by law.

24.4. Gratuities.

24.4.1. The Government may, by written notice to the Lessee, terminate this Lease if, after notice and hearing, the Secretary of the Air Force or a designee determines that the Lessee, or any agent or representative of the Lessee, offered or gave a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Government and intended, by the gratuity, to obtain a lease or other agreement or favorable treatment under a lease or other agreement, except for gifts or benefits of nominal value offered to Tenants of the Leased Premises in the ordinary course of business.

24.4.2. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

24.4.3. If this Lease is terminated under **Condition 24.4.1** above, the Government shall be entitled to pursue the same remedies against the Lessee as in a breach of this Lease by the Lessee, and in addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Lessee in giving gratuities to the person concerned, as determined by the Government.

24.4.4. The rights and remedies of the Government provided in this Condition shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

24.5. No Joint Venture. Nothing contained in this Lease will make, nor will be construed to make, the Parties hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Government and the Lessee under this Lease is that of landlord and tenant. Neither will anything in this Lease render, nor be construed to render, either of the Parties hereto liable to any third party for the debts or obligations of the other Party hereto.

24.6. Records and Books of Account. The Lessee agrees that the Secretary of the Air Force, the Comptroller General of the United States or the Auditor General of the United States Air Force or any of their duly authorized representatives shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to this Lease.

24.7. Equal Opportunity Clause. The following clause is applicable unless this Lease is exempt under the rules, regulations and relevant orders of the Department of Labor (41 C.F.R. § 60).

24.7.1. During the performance of this Lease, the Lessee agrees to comply with **Conditions 24.7.1.1 through 24.7.1.8** below.

24.7.1.1. The Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

24.7.1.2. The Lessee shall take proactive steps to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

24.7.1.3. The Lessee shall post, in conspicuous places available to employees and applicants for employment, the notices to be provided by the Government for this Lease ("Lease Officer") that explain this clause.

24.7.1.4. The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

24.7.1.5. The Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Lease Officer advising the labor union or workers' representative of the Lessee's commitments under this equal opportunity clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

24.7.1.6. The Lessee shall comply with all provisions of Executive Order No. 11246, as amended, and of the rules, regulations, and relevant orders of the Department of Labor.

24.7.1.7. The Lessee shall furnish all information required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Department of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the leasing agency and the Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

24.7.1.8. In the event of the Lessee's noncompliance with the equal opportunity clause of this Lease or with any of the said rules, regulations, or orders, the Government may take appropriate action to enforce compliance, may terminate this Lease for default and breach as provided in **Condition 7** above, and the Lessee may be declared ineligible for further Government leases and other contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, or by rule, regulation, or order of the Department of Labor, or as otherwise provided by law.

24.7.2. Notwithstanding any other provision in this Lease, disputes relative to this equal opportunity clause will be governed by the procedures in 41 C.F.R. § 60 1.1.

24.8. Remedies Cumulative; Failure of Government to Insist on Compliance. The specified remedies to which the Government may resort under the terms of this Lease are distinct, separate, and cumulative, and are not intended to be exclusive of any other remedies or

means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by the Lessee of any provisions of this Lease. The failure of the Government to insist in any one or more instances, upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or a relinquishment of the Government's right to the future performance of any such terms, covenants, or conditions, but the obligations of the Lessee with respect to such future performance shall continue in full force and effect. No waiver by the Government of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the Government.

24.9. **Headings or Titles.** The brief headings or titles preceding each Condition are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Lease.

24.10. **Counterparts.** This Lease is executed in three (3) counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

24.11. **Personal Pronouns.** All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, will include all other genders.

24.12. **Entire Agreement.** It is expressly agreed that this written instrument, together with the provisions of other documents that are expressly incorporated by reference by the terms of this Lease, embodies the entire agreement between the Parties regarding the use of the Leased Premises by the Lessee. In the event of any inconsistency between the terms of this Lease and of any provision that has been incorporated by reference, the terms of this Lease shall govern. There are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein. This instrument may only be modified or amended by mutual agreement of the Parties in writing and signed by each of the Parties hereto.

24.13. **Partial Invalidity.** If any term or provision of this Lease, or the application of the term or provision to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which the term or provision is held invalid or unenforceable, will not be affected by the application, and each remaining term or provision of this Lease will be valid and will be enforced to the fullest extent permitted by law.

24.14. **Interpretation of Lease.** All Parties and their legal counsel have participated fully in the negotiation and drafting of this Lease. This Lease has been prepared by all Parties equally and is to be interpreted according to its terms. No inference shall be drawn that this Lease was prepared by or is the product of any particular Party or Parties.

24.15. **Recording.** A Memorandum of this Lease dated of even date herewith shall be filed for record in the appropriate real estate records on or after the Term Beginning Date.

24.16. **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Lease, by name or number, to a government department, agency, statute,

regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

24.17. Approvals. Any approval or consent of the Parties required for any matter under this Lease shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Lease.

24.18. Third Party Beneficiaries. There shall be no third party beneficiaries of this Lease and none of the provisions of this Lease shall be for the benefit of, or enforceable by, any creditors of the Lessee.

24.19. No Individual Liability of Government Officials. No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

24.20. Non-Merger. Notwithstanding anything contained herein to the contrary, it is the intention of the Parties that the interest created hereunder shall remain separate and distinct interests and the leasehold interest of Lessee shall not merge with the fee title in the event that the Lessee becomes the owner of the Leased Premises.

24.21. Excusable Delays. The Government and Lessee shall be excused from performing an obligation or undertaking provided for in this Lease, and the period for the performance of any such obligation or undertaking shall be extended for a period equivalent to the period of such delay, so long as such performance is prevented or unavoidably delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, act of terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, action of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military or naval authorities (but only such orders of a general nature pertaining to the Leased Premises and comparable properties in the State of Nevada), governmental restrictions (including without limitation, access restrictions imposed by the Government and arising without fault or negligence on the part of the Lessee that significantly hinder the Lessee's ability to access the Leased Premises and perform its construction responsibilities in a timely manner), required environmental remediation or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control and without the fault or negligence of the Government or the Lessee, as the case may be, and/or any or any of their respective officers, agents, servants, employees and/or any others who may be on the Leased Premises at the invitation of the Lessee or the invitation of any of the aforementioned persons, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds (collectively, "Excusable Delays"). Nothing contained in this Condition 24.21 shall excuse Lessee from the performance or satisfaction of an obligation under this Lease that is not prevented or delayed by the act or occurrence giving rise to an Excusable Delay.

24.22. Payments to the Government. All payments to the Government shall be made by electronic funds transfer as directed by the Government in writing.

CONDITION 25.

REQUIRED ACCOUNTS

25.1. Required Accounts. During the Lease Term, the Lessee shall maintain an ICA in accordance with the following terms.

25.2. ICA Requirements: Immediately following the Term Beginning Date, the Lessee must create an ICA to receive and hold the in-kind consideration Rent due and owing under this Lease. This account must meet the following criteria: (i) it must be a Federally insured depository account; (ii) the funds in it will remain the property of, and be owned solely by, the Lessee; (iii) during the Lease Term, the Lessee must pledge and grant to the Government a continuing first lien security interest in and to all of the Lessee's right, title, and interest in and to the account, as well as all funds held, or designated for deposit in, it, whether now owned, existing, or hereafter acquired, and regardless of where located; (iv) the Lessee shall not grant or allow any other security interests in, liens to, or encumbrances on the ICA or the funds in it; and (v) the Lessee shall deliver to the Government for filing one or more financing statements, as necessary, in connection with the ICA in the form reasonably required by the Government to properly perfect its security interest in the ICA, and shall keep the lien secured by such statement(s) perfected at all times during the existence of the ICA in accordance with the laws of Nevada; and (vi), the Lessee shall deliver to the Government within ten (10) days after filing the original and any amendments to, and continuations of, any financing statement.

25.2.1. Priority of ICA: During the Lease Term, the Lessee shall make all due and owing payments into the ICA for the full amount of the Rent due before making any principal and interest payments to the Project lenders or bondholders.

25.2.2. Investment of Funds in the ICA: The Lessee shall invest funds held in the ICA solely as directed in writing by the Government. To the fullest extent practicable and reasonable, the Lessee should invest the account fund in investment securities that will mature, or can be redeemed, at the option of the Government, two (2) business days prior to the dates when the money held in the ICA is expected to be needed for payments under this Lease. Examples of acceptable investment securities that should be considered for investments with ICA funds are listed below:

(i) Cash insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in clause (ii).

(ii) Direct obligations of (including obligations issued or held in book entry form on the books of) the U.S. Department of the Treasury.

(iii) Obligations of any of the following Federal agencies that represent the full faith and credit of the United States of America, including: (a) direct obligations or fully guaranteed certificates of beneficial ownership of the Export-Import Bank; (b) certificates of

beneficial ownership of the Rural Economic Community Development Administration (formerly the Farmers Home Administration); (c) participation certificates of the General Services Administration; (d) guaranteed Title IX financing of the U.S. Maritime Administration; (e) guaranteed mortgaged-backed bonds and pass-through obligations of the Government National Mortgage Association; (f) project notes, local authority bonds, new communities debentures, and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development; (g) debentures of the Federal Housing Administration; and (h) obligations of the Federal Financing Bank.

(iv) Direct obligations of any of the following Federal agencies, which obligations are not fully guaranteed by the full faith and credit of the United States of America: (a) senior debt obligations issued by the Federal Home Loan Bank System, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Student Loan Marketing Association; (b) obligations of the Resolution Funding Corporation; and (c) consolidated system-wide bonds and notes of the Farm Credit System.

(v) U.S. dollar denominated deposit accounts, Federal funds and bankers' acceptances with domestic commercial banks, including the Agent or an Affiliate of the Agent, that have a rating on their short term certificates of deposit on the date of purchase of "A-1+" by S&P and maturing no more than 360 days after the date of purchase. Ratings on holding companies are not considered as the rating of the bank.

(vi) Commercial paper that is rated at the time of purchase in the single highest classification, "A-1+" by S&P and that matures not more than 270 days after the date of purchase.

(vii) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act, and rated "AAAm" or "AAAm-G" or better by S&P, including any mutual fund for which the agent or its affiliate serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the agent or its affiliate receives fees from such funds for services it or its affiliate renders to such fund in respect of such investment, (ii) the agent charges and collects fees for services it renders pursuant to the agreement in respect of such investment, which fees are separate from, and may be in addition to, the fees received from such funds in respect of such investment, and (iii) such services rendered by the agent or its affiliates to such funds and pursuant to the agreement in respect of such investment may at times duplicate those provided to such funds by the agent or its affiliates in respect of other investments.

(viii) General obligations of states of the United States with a rating of at least "AA" or higher by S&P.

The Lessee shall not commingle funds in the ICA with funds from any other source for the purpose of purchasing investment securities.

25.2.3. Required Reports on the ICA: The Lessee shall deliver to the Government, no more than five (5) business days after the end of each month, the following records and

reports as of the last day of the monthly reporting period. Such records and reports should be delivered to the Government. Failure of the Lessee to provide such reports in a timely manner will constitute an Event of Default.

(i) **Cash Flow Summary.** A detailed monthly cash flow summary through the last day of the calendar month that reflects the receipt, allocation, and distribution of all project revenue receipts during such month. This summary shall include the amount and date of receipts, the calculation of the amounts allocated to the ICA and other accounts related to project operating expenses, and the date of distributions to the ICA and other operating expense accounts.

(ii) **Account Balance.** A summary of the ICA, which includes the balance on the first day of each month, investment earnings during the month, deposits and withdrawals, and the ending balance on the last day of each month.

(iii) **Securities, Cash, Money Market Funds.** A summary listing of the Investment Securities, cash, and money market funds that comprise the ICA, as well as uninvested amounts (cash or money market funds), as of the last day of each calendar month, such that the sum of such items matches the account balance on that date.

The value of the investment securities cited above as examples shall be determined as of the end of each month and calculated as follows:

a) For investments that have bid and asked prices published on a regular basis in *The Wall Street Journal* or other source to which the Lessee has access (or, if not there, then in *The New York Times*), the average of the bid and asked prices for such investments so published on, or most recently prior to, such time of determination;

b) For investments that do not have bid and asked prices published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Lessee and approved by the Government) at the time making a market in such investments, or the bid price published by a nationally recognized pricing service;

c) For certificates of deposit and bankers' acceptances, the face amount thereof, plus accrued interest; and

d) For any investment not specified above, the value thereof established by prior agreement between the Lessee and the Government.

25.2.4. **Disbursement of Funds from the ICA.** Disbursements from the ICA shall be made by the Lessee pursuant solely to a written request by the Government or an authorized designee of the Secretary. The disbursements shall be used to pay the cost of providing in kind consideration at Air Force installations to be determined. Disbursement requests may be made from time to time at the discretion of the Government.

25.3. Intentionally deleted.

25.4. Intentionally deleted.

CONDITION 26.

REPORTING PROVISIONS

26.1. At all times during the Lease Term, the Lessee shall maintain at its principal place of business or such other place as agreed to by the Parties, a complete and accurate set of files, books and records of all business activities and operations conducted in connection with performance under this Lease. At all times during the Lease Term, the Government may, at such reasonable times, inspect and request copies of any of the Lessee's records, files, reports, and related material pertaining to the assets and to the performance under this Lease. All books and records of financial activity, together with any reports prepared therefrom, shall be kept and prepared as required by the Generally Accepted Accounting Principles adopted by the Government Accounting Standards Board.

26.1.1. Intentionally deleted.

26.1.2. Intentionally deleted.

26.1.3. Intentionally deleted.

26.2. **Additional Record Keeping and Delivery.** The Lessee agrees that the Government, the Comptroller General of the United States or the Auditor General of the United States Air Force, or any of its duly authorized representatives, shall, subject to Applicable Laws, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to the Leased Premises. The Lessee shall keep and maintain accurate, true, and complete books and records (hereinafter collectively referred to as "books and records"), which shall fully reflect the financial condition, occupancy, physical condition, maintenance, and operational status of the Project, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any applicable state or local law, regulation, or rule now or hereafter in effect. All books and records shall be kept at the Lessee's principal office, or at the Project, or at such other place as the Government and the Lessee both agree upon in writing. The Lessee shall deliver to the Government, upon such schedule as the Government may establish from time to time, and in such media, including electronic media as the Government shall select, all information and supporting documentation which the Lessee has maintained, or which the Government needs in order for the Government to file any report to the Department of the Air Force, the Department of Defense, or required to be submitted by the Government to any governmental or nongovernmental agency, or which the Government needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Project. Such items shall: (a) be in a form satisfactory to the Government, (b) be certified to the

Government as true, complete, and accurate in all material respects by the Lessee, and (c) be taken from the books and records maintained by the Lessee as aforesaid.

26.2.1. Intentionally deleted.

26.2.1.1. Intentionally deleted;

26.2.1.2. Intentionally deleted;

26.2.1.3. Intentionally deleted;

26.2.1.4. Intentionally deleted;

26.2.1.5. Intentionally deleted;

26.2.1.6. Intentionally deleted;

26.2.1.7. Intentionally deleted;

CONDITION 27.

RIGHTS NOT IMPAIRED

27.1. Nothing contained in this Lease shall be construed to diminish, limit, or restrict any right, prerogative, or authority of the Government over the Leased Premises relating to the security or mission of Nellis AFB, the health, welfare, safety, or security of persons on Nellis AFB, or the maintenance of good order and discipline on Nellis AFB, as established in law, regulation, or military custom.

27.2. Nellis AFB Access. The Lessee acknowledges that it understands that the Nellis AFB is an operating military installation that could remain closed to the public and accepts that the Lessee's operations may from time to time be restricted temporarily or permanently due to the needs of national defense. Access on the installation may also be restricted due to inclement weather and natural disasters. The Lessee further acknowledges that the Government strictly enforces Federal laws and Air Force regulations concerning controlled substances (drugs) and personnel, vehicles, supplies, and equipment entering the installation are subject to search and seizure, under 18 U.S.C. § 1382. The Government will use reasonable diligence in permitting the Lessee access to the Leased Premises at all times, subject to the provisions of this paragraph. Notwithstanding the foregoing, the Lessee agrees the Government will not be responsible for lost time or costs incurred due to delays in entry, temporary loss of access, barring of individual employees from the base under Federal laws authorizing such actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to, or unavailable at, their work stations, or delay arrival of parts and supplies. The Government retains the right to refuse access to the Leased Premises by the Lessee Parties. The Lessee, its employees, and invitees fully agree to abide with all access restrictions imposed by the Government in the interest of national defense.

27.3. Anything contained in this Lease to the contrary notwithstanding, the Government has the right at all times to order the permanent removal and barment of anyone from Nellis AFB if he or she believes, in his or her sole discretion, that the continued presence on Nellis AFB of that person represents a threat to the security or mission of Nellis AFB, poses a threat to the health, welfare, safety, or security of persons occupying Nellis AFB, or compromises good order and/or discipline on Nellis AFB.

27.4. Except as provided in **Condition 27.1**, nothing in this Lease shall be construed to diminish, limit, or restrict any right of the Lessee under this Lease as prescribed under their leases or Applicable Laws.

CONDITION 28.

RENEWAL OF THE LEASE

28.1. The Parties agree that at any time during the Lease Term, a renewal of this Lease may be negotiated and entered into by the Parties, provided that the Project is being operated and maintained as required by this Lease, and the Lessee is not in default of any of its obligations under this Lease.

CONDITION 29.

GOVERNMENT REPRESENTATIVES AND THEIR SUCCESSORS

29.1. The Government, acting through the Secretary of the Air Force, may delegate certain of its responsibilities under this Lease to its duly appointed representatives.

CONDITION 30.

AMENDMENTS

30.1. This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties hereto. Amendments to this Lease executed on behalf of the Government must be signed at the level of Deputy Assistant Secretary of the Air Force (Installations), or higher. Such amendments may include, but are not limited to, extensions of the Term Expiration Date.

CONDITION 31.

EXHIBITS

Intentionally deleted.

CONDITION 32.

REPORTING TO CONGRESS

32.1. This Lease is subject to mandatory legislative reporting requirements including but not limited to 10 U.S.C. §§ 2662 and 2667.

CONDITION 33.

BASE CLOSURE OPTION TO PURCHASE AND REALIGNMENT

33.1. If the Government determines that the Lease should be revoked to allow the United States to sell the Leased Premises under any other provision of law, the Lessee shall have the first right to purchase the Leased Premises on the terms and conditions set forth in this Condition 33 (the "Purchase Option").

33.2. The Lessee shall have one hundred twenty (120) days after the Government notifies the Lessee of its intent to terminate the Lease, to provide written notice to the Government that it intends to exercise its Purchase Option (the "Purchase Option Notice"). The Purchase Option shall be null and void if the Lessee fails to provide the Purchase Option Notice within such time period.

33.3. Within forty-five (45) days of the date of the Purchase Option Notice, the Government and the Lessee shall each at its own cost retain an appraiser who is a member of the American Institute of Real Estate Appraisers, with at least ten (10) years of experience appraising real estate projects that are similar to the Project, to determine the fair market value of the Leased Premises in its "as is, where is" condition, subject to all matters of record except for this Lease which shall terminate on the "Closing Date," as defined in Condition 33.6. The rent paid by Lessee for the entire Lease Term pursuant to this Lease also shall not be taken into consideration; provided, however, any restrictions that will continue to affect the use of the Leased Premises after the sale, including without limitation, rental obligations and use restrictions, if any, specifically, identified by the Government, shall be considered by the appraisers (the "Leased Premises Fair Market Value"). Unless otherwise mutually agreed by the Parties, the Government and the Lessee shall deliver their appraisers' reports (respectively, the "Government Appraisal" and the "Lessee Appraisal") to each other within ninety (90) days of the Purchase Option Notice.

33.4. If the Leased Premises Fair Market Values disclosed in the Government Appraisal and the Lessee Appraisal are ten percent (10%) or less apart, then the purchase price of the Leased Premises (the "Purchase Price") shall be the average of such Leased Premises Fair Market Values. If the Leased Premises Fair Market Values disclosed in the Government Appraisal and the Lessee Appraisal are more than ten percent (10%) apart, then within one hundred twenty (120) days of the Purchase Option Notice, or such other date as mutually agreed to by the Parties, the Government and the Lessee shall select a third appraiser who satisfies the criteria set forth in Condition 33.3 and has not been retained previously by either the Government or the Lessee (or any person or entity affiliated with the Lessee) (the "Third

Appraiser”) to determine the Leased Premises Fair Market Value. The Parties shall each pay one-half (1/2) of the fees and expenses of the Third Appraiser. The Third Appraiser shall deliver its appraisal report (the “Third Appraisal”) to the Parties within forty-five days of the date it is retained. The Third Appraiser shall not review the Government Appraisal or Lessee Appraisal prior to delivery of the Third Appraisal to the Parties.

33.5. If the Leased Premises Fair Market Value disclosed in the Third Appraisal is five percent (5%) or less apart from the Leased Premises Fair Market Value disclosed in either the Government Appraisal or the Lessee Appraisal, then the Purchase Price shall be the average of the Leased Premises Fair Market Values disclosed in the Third Appraisal and the Leased Premises Fair Market Value that is five percent (5%) or less apart from that disclosed in the Third Appraisal. If, however, the Leased Premises Fair Market Value disclosed in the Third Appraisal is more than five percent (5%) apart from the Leased Premises Fair Market Values disclosed in the Government Appraisal and Lessee Appraisal, but between such Leased Premises Fair Market Values, then the Leased Premises Fair Market Value disclosed in the Third Appraisal shall be the Purchase Price. If, however, the Leased Premises Fair Market Value disclosed in the Third Appraisal falls outside such Leased Premises Fair Market Values, then the Purchase Price shall be average of the Leased Premises Fair Market Value disclosed in the three appraisals.

33.6. At any time within ten (10) days following determination of the Purchase Price, Lessee shall have the right in Lessee’s sole discretion to withdraw the Purchase Option Notice by delivering written notice of such withdrawal to the Government. Such withdrawal of the Purchase Option Notice shall unconditionally and forever terminate the Purchase Option.

33.7. If Lessee does not withdraw the Purchase Option Notice within that ten (10) day period following the determination of the Purchase Price, then the Government and the Lessee shall finalize the documentation for the sale of the Leased Premises to the Lessee pursuant to this **Condition 33** (the “Closing Documentation”). The conveyance of the Leased Premises shall be made by quitclaim deed, “as is, where is,” for all known and unknown conditions, including environmental conditions, not more than ninety (90) days after the last to occur of (a) the determination of the Purchase Price; (b) the preparation and execution by the Parties of a final ESA for the Leased Premises; and (c) satisfaction of all requirements of Applicable Laws (the “Closing Date”). The Closing Documentation shall provide, in part, that (i) the Purchase Price shall be paid in full at closing in lawful money of the United States of America to the Treasurer of the United States of America or in the form of in-kind consideration as specified by the Government; (ii) this Lease shall terminate on the Closing Date; and (iii) if the Leased Premises have not been severed from Nellis AFB prior to the Closing Date, then the Government shall have authority over the Leased Premises with respect to the security or mission of Nellis AFB, the health, welfare, safety, or security of persons occupying Nellis AFB, or the maintenance of good order and discipline on Nellis AFB until severance of the Leased Premises from Nellis AFB.

33.8. If Congress approves a realignment of Nellis AFB that impacts this Lease.

CONDITION 34.

DEFINED TERMS

34.1. Capitalized terms set forth below shall have the following meanings:

“ACM” means, collectively, asbestos or asbestos-containing material (ACM).

“Additional Rent” means all sums other than Base Rent and Supplemental Rent payable by the Lessee to the Government under this Lease, including but not limited to all items of reimbursement, such as reimbursement for police and fire protection services provided by the Government.

“Applicable Laws” means, collectively, all federal, state and local laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which are applicable to the Lessee or the Project during the Lease Term.

“Bankruptcy Code” means the United States Bankruptcy Code.

“Base Rent” means the cash or in-kind consideration rent paid to the Government by the Lessee on the Lease Term Beginning Date.

“Certificate of Compliance” means a certificate of compliance issued pursuant to Condition 17.18 of this Lease.

“Closing Date” means the date of the conveyance of the Leased Premises pursuant to Condition 33, which date shall be not more than ninety (90) days after the last to occur of (a) the determination of the Purchase Price; (b) the preparation and execution by the Parties of a final ESA for the Leased Premises; and (c) satisfaction of all requirements of Applicable Laws.

“Closing Documentation” means the documentation for the sale of the Leased Premises to the Lessee pursuant to Condition 33 of this Lease.

“Completion Date” means the date a Certificate of Compliance is issued.

“Construction Consultant” means a certified professional retained by the Lessee who is not affiliated with the Lessee or any of the Lessee’s affiliates, to administer the Lessee’s quality control program. Such professional shall be approved by the Government and shall perform inspections, and provide certifications of compliance with the Construction Requirements as requested by the Government.

“Construction Management Plan” means the Construction Management Plan included as attachment to the Operating Agreement.

“Construction Requirements” means, collectively, this Lease, the Final Plans, and the Construction Management Plan.

"Damaged or Destroyed Property" means any part of the Project that is damaged (except de minimis damage) or destroyed.

"Day" means a calendar day unless otherwise specified in writing in the project document.

"Default Termination Notice" means the Government's written notice to the Lessee that terminates this Lease, without any cost or liability to the Government, if an Event of Default exists. Such notice shall be effective as of the date specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Lessee.

"Development Plan"

"ESA" means the Environmental Site Assessment for Enhanced Use Lease at Nellis Air Force Base, dated 11-Apr-2008 delivered to the Lessee.

"Effective Date" means 1 October, 2008.

"Event of Default" means the following: The Lessee's failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Government to the Lessee. If, however, such default is not reasonably susceptible to cure within such thirty (30) day period, the Lessee shall have such longer period as may be approved in writing in advance by the Government, which approval shall not be unreasonably withheld, to cure such default so long as the Lessee commences curing such default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the Government, which approval shall not be unreasonably withheld.

The failure of the Lessee to pay Rent, when due and such failure remains uncured for a period of ten (10) days after written notice to the Lessee by the Government of the Lessee's failure to pay such amount.

The Lessee voluntarily files for bankruptcy protection under the United States Bankruptcy Code (the "Bankruptcy Code") or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against the Lessee by any creditor of the Lessee pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within sixty (60) days after filing.

If any voluntary or involuntary petition is filed under the Bankruptcy Code by or against the Lessee (other than an involuntary petition filed by or joined in by the Government), the Lessee shall not assert, or request any other party to assert, that the automatic stay under the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce, or inhibit the ability of the Government to enforce any rights it has by virtue of any agreement between the Parties, or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of the Lessee under such agreements. Furthermore, the Lessee shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to the Bankruptcy Code, to stay, interdict, condition, reduce, or inhibit the

ability of the Government to enforce any of its rights under such agreements against any party responsible for the debts or obligations of the Lessee. The waivers contained in this Condition are a material inducement to the Government's willingness to enter into this Lease and the Lessee acknowledges and agrees that no grounds exist for equitable relief that will bar, delay, or impede the exercise by the Government of its rights and remedies under such agreements against the Lessee or any party responsible for the debts or obligations of the Lessee.

If any or all of the Project or any interest in the Project becomes the property of any bankruptcy estate or subject to any state or Federal insolvency proceeding, then the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under any agreement between the Parties, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to the Bankruptcy Code so as to permit the Government to pursue its rights and remedies at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting the Lessee's use of all "cash collateral," as defined under the Bankruptcy Code. In connection with such Bankruptcy Court orders, the Lessee shall not contend or allege in any pleading or petition filed in any court proceeding that the Government does not have sufficient grounds for relief from the automatic stay. The Lessee acknowledges and agrees that any bankruptcy petition or other action taken by the Lessee to stay, condition, or prevent the Government from exercising its rights or remedies under this Lease or any other agreement between the Parties shall be deemed to be in bad faith.

At the election of the Government and upon written notice thereof to the Lessee, the occurrence of a "In-kind Consideration Account ("ICA") Event of Default." As used in this Condition 7.1.4, a "ICA Event of Default" means failure to comply with the ICA Requirements identified in Condition 25.

"Excusable Delay" means the Government and Lessee shall be excused from performing an obligation or undertaking provided for in this Lease, and the period for the performance of any such obligation or undertaking shall be extended for a period equivalent to the period of such delay, so long as such performance is prevented or unavoidably delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, act of terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, action of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military or naval authorities (but only such orders of a general nature pertaining to the Property and comparable properties in the State of Nevada), governmental restrictions (including without limitation, access restrictions imposed by the Government and arising without fault or negligence on the part of the Lessee that significantly hinder the Lessee's ability to access the Leased Premises and perform its construction responsibilities in a timely manner), required environmental remediation or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control and without the fault or negligence of the Government or the Lessee, as the case may be, and/or any or any of their respective officers, agents, servants, employees and/or any others who may be on the Leased Premises at the invitation of the Lessee or the invitation of any of the aforementioned persons, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds.

“Extensive Damage or Destruction of Improvements” means the magnitude of Damaged or Destroyed Property, as determined by the Government in consultation with the Lessee, is so extensive that the Project cannot be used by the Lessee for its operations and the repairs, rebuilding, or replacement of the Damaged or Destroyed Property cannot reasonably be expected to be substantially completed within nine (9) months of the occurrence of the casualty.

“Facility” means, only for the purposes of Condition 24.3, lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

“Fair Market Rental Value of the Leased Premises” means the annual fair market rental value of the Leased Premises, exclusive of the Facility, as determined by a duly licensed and qualified appraiser mutually acceptable to the Government and Default Purchaser using the Uniform Standards of Professional Appraisal issued by the American Institute of Real Estate Appraisers and based on the then current use of the Leased Premises.

“Final PCR” means a PCR prepared by the Government and signed by the Parties within ten (10) days after the expiration or earlier termination of this Lease for each respective parcel of the Leased Premises.

“Final Plans” means any or all of the Development Plans that are 100% complete.

“Final Plan Decision” means the decision (i) of the Government for (a) any Plan Dispute involving \$10,000 (exclusive of interest) or less or, (b) any Plan Dispute involving more than \$10,000 that is not timely appealed to the Secretary; or (c) of the Secretary for any Plan Dispute involving more than \$10,000 (exclusive of interest) that is timely appealed.

“Government” means the United States of America acting by and through the Secretary of the Air Force.

“Government Appraisal” means the report of the appraiser retained by the Government to determine the Leased Premises Fair Market Value.

“Government Retention Notice” means the Government’s written notice to Lessee of the Government’s election to require that all or any portion of the Facility and the personal property of the Lessee located therein revert or be transferred to the Government, as applicable, on the Lease Termination Date or the effective date of any Default Termination Notice or Termination Notice for Extensive Damage or Destruction.

“Hazardous Substance” shall have the meaning defined in section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S. C. § 9601(14)).

“Improvement Removal Report” means a report provided by the Lessee to the Government that is prepared by a construction and demolition expert approved by the Government, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all improvements on the Leased Premises.

"ICA" means the In-kind Consideration Account for the deposit of the Rent by the Lessee and the making of disbursements only with the prior approval of the Government, and that the Lessee is required to establish and maintain in accordance with Condition 25.2.

"ICA Event of Default" means failure to comply with the ICA Requirements in Condition 25.2.

"IRP" means the Nellis Installation Restoration Program (IRP).

"LBP" means lead-based paint materials (LBP).

"Leased Premises" means the real property described in Exhibit A to this Lease.

"Leased Premises Fair Market Value" means the fair market value of the Leased Premises as determined in accordance with Condition 33.

"Facility" means those improvements and personal property, if any, existing on the Leased Premises on the Term Beginning Date that are owned by the Government together with all improvements and personal property that may be constructed or placed on the Leased Premises by the Lessee.

"Lease Term" means the period from the Term Beginning Date through the Term Expiration Date.

"Lease Termination Extension Date" means a reasonable extension of the date for termination of this Lease granted by the Government pursuant to the Mortgagee's Right to Postpone.

"Lessee" means the City of North Las Vegas, a municipal corporation created under the laws of the State of Nevada, with its principal offices located at 2200 Civic Center Drive, North Las Vegas, Nevada 89030.

"Lessee Appraisal" means the report of the appraiser retained by the Lessee to determine the Leased Premises Fair Market Value.

"Lessee Parties" means the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Leased Premises for the purpose of performing official duties, and not as Tenants) who may be on the Leased Premises at their invitation or the invitation of any one of them.

"Notice to Proceed" means the Government's written authorization for the Lessee to proceed with the construction of the Facility for a Construction Phase. The Government will, subject to the Lessee's continued compliance with this Lease, issue such authorization within two (2) weeks after the Government provides written confirmation to the Lessee of its receipt of the Final Plans for that Construction Phase.

"Operating Agreement" means the Operating Agreement dated of even date with this Lease, which is incorporated into and made a part of this Lease.

“Outgrants” means, collectively, easements, rights in the nature of easements, rights of way, licenses, or other property rights or interests, whether or not of public record, reserved or granted pursuant to the first paragraph of Condition 2.1.

“PCR” means a physical condition report.

“Parties” means the Government and the Lessee, jointly.

“Party” means the Government and the Lessee, separately.

“Personal default” means any default of the Lessee that cannot be cured by the payment of money or performance of demolition, design, construction, renovation, operation, and maintenance work, including any bankruptcy of the Lessee. Examples of personal defaults include, without limitation, defaults in Conditions 24.1 through 24.4, 24.6, and 24.7 of this Lease. Defaults under Condition 26 also shall constitute personal defaults to the extent records are not available to prepare the reports required by that Condition.

“Pesticide Management Plan” means a plan for storage, mixing, and application of pesticides that the Lessee shall prepare prior to the storage, mixing, or application of any pesticide, as that term is defined under FIFRA. The Pesticide Management Plan shall be sufficient to meet all Applicable Laws.

“Plan Alterations” means the Lessee’s proposed changes to the Development Plans previously submitted to the Government.

“Plan Alterations Exception Notice” means the Government’s written notice to the Lessee that any of the Plan Alterations submitted to the Government for its review are inconsistent with the scope of the Development Plan.

“Plan Dispute” means within twenty (20) days after delivery to the Lessee of a Plan Alterations Exception Notice, the Lessee and the Government are unable to agree on whether the plans satisfy the Design Criteria.

“Pre-Construction Conference” means a pre-construction conference that the Lessee, the Lessee’s general contractor, if any, and the Government attend to acquaint the Lessee, the Government and the other participants with the Construction Management Plan.

“Pretreatment Permit Application” means an application for the Lessee’s discharge that the Lessee shall submit prior to the Term Beginning Date if the Lessee discharges wastewater to a publicly owned treatment works.

“Project” means, collectively, the Leased Premises and the Facility.

“Project Documents” refer to this Lease and all documents attached to this Lease.

“Purchase Option” means the Lessee’s right, to extent permitted by Applicable Laws and on the terms and conditions set forth in Condition 33, to purchase the Leased Premises.

"Purchase Option Notice" means the Lessee's written notice to the Government that it intends to exercise its Purchase Option.

"Purchase Price" means the purchase price of the Leased Premises.

"Rating Agency" means any nationally recognized credit rating service that at the time has one or more outstanding ratings of any securities issued by the Lessee to fund construction of the Project.

"Rent" means, collectively, Base Rent and Supplemental Rent.

"Restoration Deadline" means the date by which the Lessee shall remove all of the Facility and its other property from the Leased Premises and restore the Leased Premises to the reasonable satisfaction of the Government, which date shall be no later than one hundred eighty (180) days after the Lease Termination Date, or the effective date of a Default Termination Notice pursuant to Condition 7.3.1 or a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to Condition 7.3.2, as applicable, or a date mutually agreed to by Lessee and the Government.

"Secretary" means the United States of America acting by and through the Secretary of the Air Force.

"Site Design Plans" means the site design plans and specifications (which shall include utilities systems and landscaping.)

"Substantial Completion" means completion of all of the Facility for the applicable Construction Phase or such smaller portion of the Project as approved by the Government in accordance with the Construction Requirements, except for the Approved Punch List Items.

"Term Beginning Date" means 12:01 a.m. local time, September 1, 2008.

"Term Expiration Date" means 11:59 p.m. local time, August 31, 2058, unless sooner terminated in accordance with the terms contained in this Lease.

"Termination Notice" means the Government's notice of termination to the Lessee when the Government elects to terminate this Lease pursuant to Condition 7.3.

"Termination Notice for Extensive Damage or Destruction of Improvements" means written notice by the Government or the Lessee to the other Party that terminates this Lease in the event of Extensive Damage or Destruction of Improvements. Such notice shall be effective as of the date to be specified therein, which shall be at least thirty (30) but not more than forty five (45) days after its receipt by the Lessee.

"Third Appraisal" means the report of the Third Appraiser.

"Third Appraiser" means an appraiser selected by the Government and the Lessee who satisfies the criteria set forth in Condition 33.3 and has not been retained previously by either the Government or the Lessee (or any person or entity affiliated with the Lessee) to determine the

Leased Premises Fair Market Value when the Leased Premises Fair Market Values disclosed in the Government Appraisal and the Lessee Appraisal are more than ten percent (10%) apart.

“Utility Costs” means the cost of providing electricity (and natural gas, as applicable) to the Lessee.

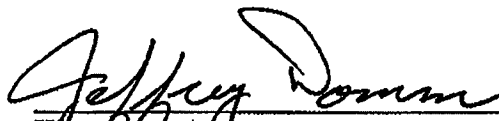
“Utility Facilities” means the existing utility distribution and collection systems for electricity, gas, water, and sewer to the Leased Premises that the Government has leased to the Lessee.

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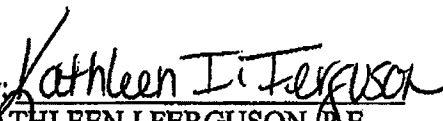
IN WITNESS WHEREOF, the United States of America has executed this Lease effective as of 1 October 2008.

Signed, sealed and delivered
in the presence of:

THE UNITED STATES OF AMERICA,
acting by and through the Secretary of the
Air Force


Witness Jeffrey Domm

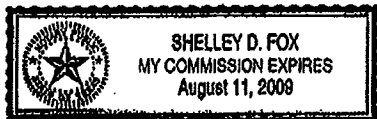

Witness Allan E. Curlee

By: 
KATHLEEN I. FERGUSON, P.E.
Deputy Assistance Secretary of
The Air Force (Installations)

STATE OF TEXAS

COUNTY OF BEXAR

On the 17th day of October, 2008, before me, Shelley D. Fox, the undersigned Notary Public, personally appeared KATHLEEN I. FERGUSON, personally known to me to be the person whose name is subscribed to the foregoing Lease, and personally known to me to be the Director, Air Force Real Property Agency, and acknowledged that the same was the act and deed of the Secretary of the Air Force and the he executed the same as the act of the Secretary of the Air Force for the purposes and consideration cited therein.

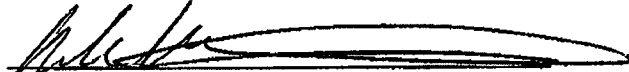


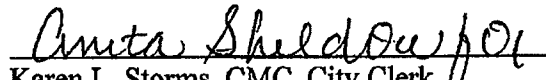

Notary Public, Commonwealth of Virginia

My commission expires: 11 August 2009

THIS LEASE is also executed by the Lessee as of this ^{16th} day of October, 2008

CITY OF NORTH LAS VEGAS


By: Michael L. Montandon, Mayor

ATTEST: 
Karen L. Storms, CMC, City Clerk

APPROVED AS TO FORM:

By: 
Carie A. Torrence, City Attorney